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| 09/960,615      | 09/21/2001  | Joseph Yoder         | 61773.02101         | 7143             |

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EXAMINER

KOVACS, ARPAD F

ART UNIT

PAPER NUMBER

3671

DATE MAILED: 06/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/960,615

Applicant(s)

YODER ET AL.

Examiner

Árpád Fábián Kovács

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10-12 is/are allowed.
- 6) ☒ Claim(s) 1,2,4-9,13,15-32,34-36,38 and 39 is/are rejected.
- 7) ☒ Claim(s) 3,14,33,37 and 40 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 June 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                          | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>11</u> . | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to under 37 CFR 1.83(a) because they fail to show

ref 40 being shorter at exit and longer at entrance (pg 12, last paragraph, line 1-2) as described in the specification.

Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

It is noted that the Applicant's amendment **does not comply**, as shown in the figure 6, and amended in the disclosure, on page 12 & ending on page 13, lines 2-3, the dotted line configurations of some of the finger member 40 in Figure 6 is not shown.

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore,

the means for adjusting the space between adjacent ones of said longitudinal bars (cl. 2, line 4-5; it is noted on page 10, last paragraph and continuous on page 11, that the it is not the spacing between the bars is adjusted; there is not means for adjusting, including elements making this feature possible is provided); it is noted that Applicant's argument does not explain this feature, dismissing this objection on the

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grounds of whether it could have been raised at all, it does not provide sufficient answer and **does not comply** with the objection raised by the Examiner;

means for moving ... along an endless circular path (cl 3, line 2); it is noted that Applicant's argument does not explain this feature, dismissing this objection on the grounds of whether it could have been raised at all, it does not provide sufficient answer and **does not comply** with the objection raised by the Examiner;

a collection area (cl 3 & 12 & 37, last line); it is noted that Applicant's argument does not explain this feature, dismissing this objection on the grounds of whether it could have been raised at all, it does not provide sufficient answer and **does not comply** with the objection raised by the Examiner;

a hitch (cl 5, line 1); it is noted that Applicant's argument does not explain this feature, dismissing this objection on the grounds of whether it could have been raised at all, it does not provide sufficient answer and **does not comply** with the objection raised by the Examiner;

a tractor or pulling machine (cl 5, line 2; cl 15, line 1); it is noted that Applicant's argument does not explain this feature, dismissing this objection on the grounds of whether it could have been raised at all, it does not provide sufficient answer and **does not comply** with the objection raised by the Examiner;

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must be shown or the feature(s) canceled from the claim(s). No new matter should be entered. It is noted that elements not shown and/or not disclosed are not searched and/or considered in applying the prior art rejection.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

***Specification***

3. The specification lacks positive antecedent basis for:

in claims 2 in line 9, 7 in line 3 (this feature was **newly** added/amended), 12 in line 9 respectively, recitation of “sinuous” member is confusing, the endless belt, which the applicant may refer to does not have “sinuous” shape as shown and/or disclosed in the drawings/specification; it is noted that Applicant’s argument to characterize “sinuous” as to mean “... lithe movement” is not agreed with, it is unclear where in the specification and in the drawings this feature (sinuous) the Applicant believes to provide antecedent basis, therefore the Applicant’s amendment **does not comply** with this objection;

in claims 2 & 7, unlike what is claimed (adjusting or positionable horizontal bars) the spacing between the bars (mounted to the endless member) are not adjustable/positionable; for examination purposes the means for adjusting & bars are positionable at variable spacing along said endless chain will not be considered; as also it was objected and detailed above in re drawings objection, Applicant’s amendment **does not comply** with this objection;

in claim 26, “a subset of said finger members are rigid,” it is noted that the Applicant replaced “only some” with “subset” which is still not clear where in the disclosure/drawings it is shown or specified the number (or any at all) of fingers which are rigid and the number (or any at all) of finger members which are not rigid;

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in claim 30, the means for separately adjusting distance of separation between the arrays at forward and rearward portions is not disclosed and/or shown, the spacing bar ref 54, cannot separately adjust two different distances both at the front & rear;

in claim 31, lines 1-5 are not shown and/or disclosed.

Claims lacking positive antecedent basis in the specification will not be considered on their merit.

**Claim Rejections - 35 USC § 102**

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 4-5, 23, 31, 34-36, are rejected under 35 U.S.C. 102(b) as being anticipated by Pocock (1439187).

In re independent claims 1, 34-35, Pocock discloses a frame (A), wheels (B or C), at least one pair of facing arrays of finger members / endless webs with stripping means / endless movable array of finger members generally upstanding longitudinally elongated and substantially planar (16);

In re claims 4, 18, means for vertically adjusting the arrays (page 2, lines 50-75);

In re claims 23, 36, the plurality of finger members projecting transversely from the sheet like planar portions / flexible web (chain 16, see fig 1 or 7).

6. Claims 1-2, 4-5, 7-9, 15, 18, 22-23, 27-31, 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Polisena (2515966).

In re independent claims 1, 34-35, Polisena discloses a frame (10), wheels (28), at least one pair of facing arrays of finger members / endless webs with stripping means / endless movable array of finger members generally upstanding longitudinally elongated and substantially planar (65 & 70, 63 & 69);



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In re claim 2, the finger members extending transversely from a plurality of longitudinally elongated horizontal bars (64), and the web / endless member (chain) connected to the bars for carrying the bars along an endless path (fig 8);

In re claim 4, means for vertically adjusting the arrays relative to the frame (see fig 1, ref 43, 50);

In re claims 8, 18, means for adjusting distance of separation including between the arrays / web and from the ground independently (see fig 1, the dashed lines show the distance of separation);

In re claim 9, receptacle means for attaching the fingers to elongated horizontal bars (see fig 7, at 64 & 65);

In re claim 27, as shown on fig 1, at the front section, at entrance, near where gatherer intercepts the crop and the like, the finger members of the two arrays interdigitate in at least a portion of the region;

In re claims 23, 36, the plurality of finger members projecting transversely from the sheet like planar portions / flexible web (see fig 2);

In re claims 28-30, as shown on fig 1, dashed lines illustrates that at point of entrance the arrays / web can be less proximate to each other.

As applied to claim(s) 13, 16-17, 32, 41, in view of the structure disclosed/taught by Polisena, the method of operating/using the device is inherent since it is the normal and logical manner in which the device is used.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 13, 19-21, 24-26, 38-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pocock (1439187) or Polisena (2515966).

In re claims 19-21 & 24-26, 38-39, discloses the claimed invention except for the fingers (or some finger members) and/or sheet like portions being of rigid, resilient, elastomeric, or homogeneous material.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the fingers of resilient, flexible, elastomeric, or homogeneous material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

In re claim 24, discloses the claimed invention except for the arrays being integral, one piece molded construction.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the fingers integral, one piece molded construction, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 U.S. 164 (1893).

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9. Claims 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Polisena (2515966).

In re claim 22, discloses the claimed invention except for the bars & finger members being integral, one-piece construction.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the bars & finger members being integral, one piece construction, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 U.S. 164 (1893).

As applied to claim(s) 13, 15, 32, in view of the structure disclosed/taught by Pocock, the method of operating/using the device would have been obvious since it is the normal and logical manner in which the device is used.

10. Claims 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pocock (1439187) or Polisena (2515966) in view of Yoder (6282877).

Pocock or Polisena discloses the claimed invention above except for a hydraulic piston cylinder combination for vertically adjusting the frame relative wheel.

Yoder discloses such device (col. 2, lines 5-28).

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It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the device of Pocock or Polisena with a hydraulic piston cylinder as taught by Yoder, in order to provide better follow the counter of the field.

***Allowabl Subj ct Matt r***

11. Independent claim 12 & dependent claims 10-11 are allowed.
12. Claims 3, 14, 33, 37, 40 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***R sponse to Argum nts***

13. Applicant's arguments filed 6/5/2003 have been fully considered but they are not persuasive.

Applicant's argument that the claimed feature or the subject matter to be patented does not need to be shown, is not agreed with, as outlined in the greater detail above, there are a number of claimed features are not shown. Furthermore, the Applicant states that the subject matter is well known to one skilled in the art; however, it was not clear that besides the tractor, what other elements are known and how the would be interoperating with Applicant's invention. This would allow the Examiner to concentrate on features which are really Applicant's invention and improvement. It would be helpful to provide such prior art in order to enhance Applicant's argument regarding this matter .

Applicant's argument regarding the "sinuous" (now also in claim 7) that it means "characterized by lithe movement," in addition to the arguments detailed above, the Examiner did not find antecedent basis in the drawings (i.e. not shown) and/or the specification.

Applicant's argument regarding the "specification lacks antecedent basis for the spacing between the bars," is not agreed with, since the Applicant mischaracterizes the rejection made, also see detailes above.

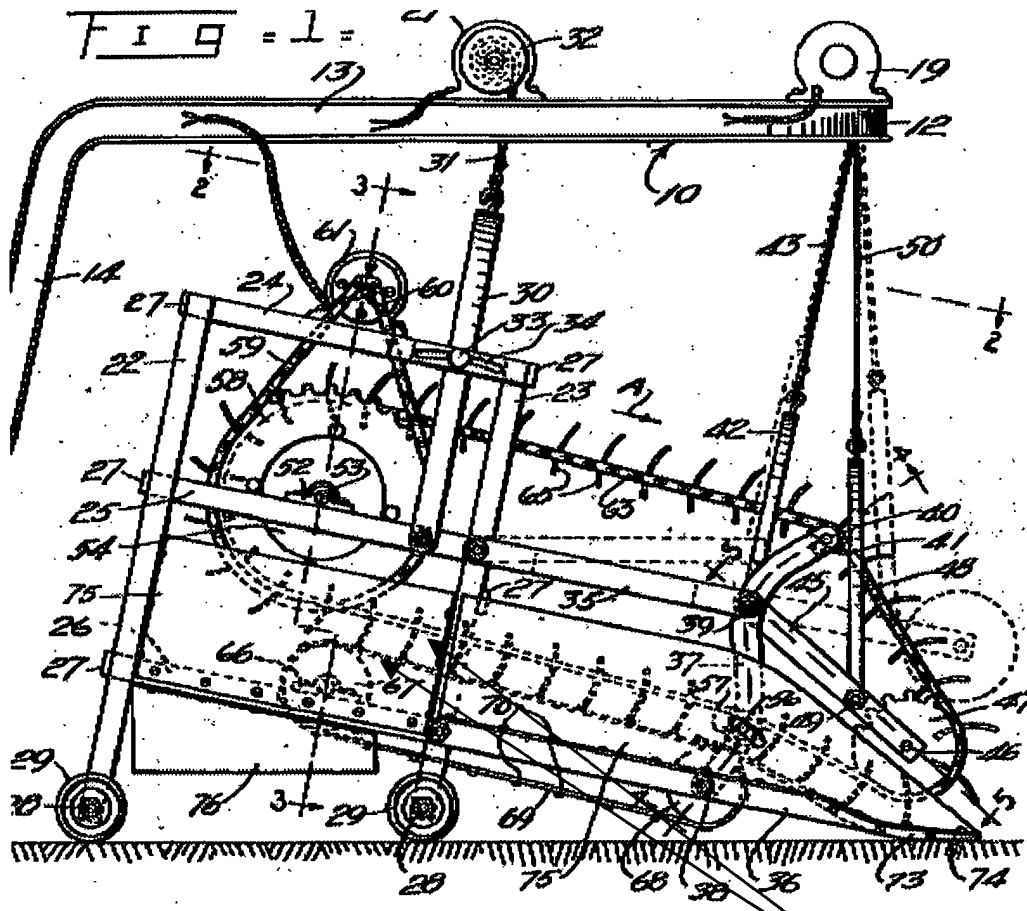
Applicant's argument regarding claim 26, is not agreed with because now the Applicant introduces similar language without providing support for the claimed subject matter (now it is introduced as "a subset"), as detailed above.

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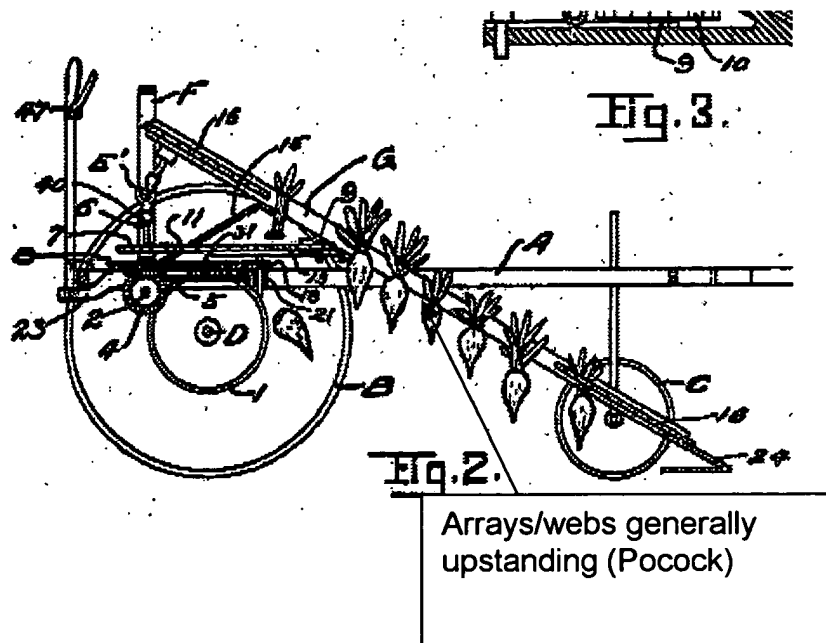
Applicant's argument regarding claim 30, the Applicant again mischaracterizes Examiner's objection, also see the exact objection and details above.

Applicant's argument regarding claim 31, per Applicant's instruction the Examiner has reviewed p. 13, 1<sup>st</sup> complete paragraph (now amended), but did not find any support for the objection made, also see above.

Applicant's argument in re claims 1, 13, 34, 35, that the arrays/webs are not upstanding in the cited prior art is not agreed with, because as shown below the arrays & webs are indeed generally upstanding as claimed.



Arrays/webs generally upstanding  
(Polisena)



**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.



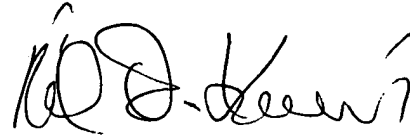
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***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Árpád Fábián Kovács whose telephone number is 703 308 5897. The examiner can normally be reached on Mo-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 703 308 3870. The fax phone numbers for the organization where this application or proceeding is assigned are 703 305 7687 for regular communications and 703 308 8623 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308 1113.



Árpád Fábián Kovács  
Examiner  
Art Unit 3671

ÁFK  
June 27, 2003